UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES SAN FRANCISCO

CASTRO VALLEY ANIMAL HOSPITAL, INC.
Respondent

and

Cases 32–CA–251642
32–CA–254220

CHRISTINA ARIANNA PADILLA, an Individual
Charging Party

and

AKILAH WILLIAMS, an Individual
Charging Party

Amy Berbower, Esq., for the General Counsel.
Jonathan Martin, Esq., for Respondent.

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Oakland, California, from March 10–11, 2020. Christina Arianna Padilla (Padilla) and Akilah Williams (Williams) (collectively, Charging Parties) filed charges, as captioned above, on November 12, 2019 and January 6, 2020. The General Counsel, through the Regional Director for Region 32 of the National Labor Relations Board (the Board), issued a complaint and consolidated complaint, dated January 2, 2020 and February 20, 2020, respectively. Castro Valley Animal Hospital (Respondent) filed timely answers to the complaint and amended complaint.

The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) when (1) about October 21, 2019,[1] it threatened employees with termination if they did not waive their group complaints about their terms and conditions of employment by signing an acknowledgment form that said the employees were provided enough time for meals; (2) about October 22, reported an employee to the police because the employee engaged in protected concerted activity by refusing to waive a group complaint about not getting meal breaks; (3) about November 7, reported an employee to the police because the employee engaged in protected concerted activities by refusing to waive a group complaint about not

[1] All dates hereinafter are 2019 unless otherwise specified.

getting meal breaks and/or not being paid for working overtime; (4) on or about October 18, terminated employee Williams; and (5) on or about October 21, terminated employee Padilla.

In its answer, Respondent denies the allegations. Respondent claims that no threat was made, denies knowledge of any alleged group complaints, and denies that employees were asked or compelled to sign an acknowledgment form as alleged. Respondent also asserts that on about October 22 it reported an employee to the police for stealing money, and on about November 7 it reported an employee for her harassing communications. Finally, Respondent admits that it terminated Padilla on or about October 21 but denies terminating Williams on or about October 18. Respondent claims that it terminated Padilla for legitimate, non-discriminatory and non-retaliatory reasons unrelated to her alleged protected concerted activity, her alleged complaints, her alleged refusal to sign any form (as Respondent did not provide such a form), and any other alleged protected activity. Instead, Respondent terminated Padilla for her unlawful and disloyal acts. As for Williams, Respondent asserts that she voluntarily resigned her employment, and if it is found that Respondent terminated Williams, it was for legitimate, non-discriminatory and non-retaliatory reasons unrelated to her alleged protected concerted activity or any other alleged protected activity. Instead, Respondent claims, Williams refused to perform her required job duties.

On the entire record,[2] including my observation of the demeanor of witnesses,[3] and after considering the briefs filed by the General Counsel and Respondent,[4] I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation with an office and place of business in Castro Valley, California, is engaged in the operation of a veterinary clinic and animal hospital. During the 12-month period ending October 1, Respondent, in conducting its operations at its place of business in Castro Valley, California, derived gross revenues in excess of $500,000, and

[2] The transcripts and exhibits in this case generally are accurate other than a few misspellings.

[3] Although I have included several citations to the evidentiary record in this decision to highlight testimony or exhibits, I emphasize that my findings and conclusions are not based solely on those citations, but rather are based on my review of the entire record for this case. Furthermore, in evaluating witness' testimonies, I have considered the demeanor of the witnesses; the apparent interests of the witnesses; the inherent probabilities; corroboration or lack thereof; consistencies or inconsistencies within the testimony of the witnesses and between the witnesses when testifying about the same event. See, e.g. *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Any testimony in contradiction to my findings has been considered but rejected. Additionally, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). Most striking to me is the incredible testimony of Gurbinder Brar (Brar), who is Respondent's owner, as much of his testimony was contradicted by his contemporaneous text messages between the Charging Parties and himself.

[4] Other abbreviations used in this decision are as follows: "GC Exh." for the General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "GC Br." for the General Counsel's Brief; and "R. Br." for Respondent's Brief.

purchased and received goods and materials valued in excess of $5,000 directly from points outside the State of California. Accordingly, I find, and Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Based on the foregoing, I find this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

Respondent is a veterinary clinic and animal hospital (the facility) in Castro Valley, California, and is owned and operated by veterinarian Gurbinder Brar (Brar) (Tr. 231); the facility's hours of operation are from 8:30 a.m. to midnight 7 days a week. Along with Brar, two other veterinarians work at Respondent including his wife Nitu Brar (Dr. Nitu).[5] Respondent also employs a handful of veterinary technicians (vet techs) and receptionists who are either paid hourly or on salary; an individual may be hired to perform both job functions or only one job function. Nevertheless, receptionists assist the veterinarians and vet techs, but the amount and type of assistance varies among the receptionists (Tr. 21–23, 304, 311, 290, 295–296, 319–320).[6] Receptionists perform duties such as checking in and out clients and answering phone calls. When assisting the veterinarians and vet techs, receptionists may hold animals for injections, put animals in kennels, bring animals to their owners, and vaccinate animals (Tr. 335). No written job duties for the receptionist position exists (Tr. 359–360).[7]

When Respondent hires new employees, these employees are verbally informed of workplace policies and rules; no employee handbook or written policies exist, including instructions on clocking in and out for meal or lunch breaks (Tr. 23). Employees are trained by other employees. On occasion, Brar would make policy announcements to the employees via

[5] Both Brar and Dr. Nitu are admitted supervisors and agents of Respondent within the meaning of Sections 2(11) and 2(13) of the Act.

[6] Brar claimed that all receptionists perform a wide range of duties assisting the veterinarians and vet techs. However, it is clear from witness testimony that the duties varied greatly among the receptionists. Ronnie Swart (Swart), who self-identified as a head or lead receptionist, testified that she did not perform vet tech duties including assisting in animal euthanasia and surgeries, and that receptionists do not have to perform vet tech work (Tr. 319–320). Swart testified that a receptionist may perform such duties if she has the time or desire to do so (Tr. 319–320).

[7] Brar claimed that the receptionist's job description was created by the receptionists, including Padilla, and a written description was located at the receptionist's desk (Tr. 359). However, Respondent did not introduce the job description into the record and failed to provide the job description in response to the General Counsel's subpoena duces tecum (Tr. 359–361). Thus, I draw an adverse inference that a written job description for the receptionist position does not exist. See *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 1 fn. 1 and 15 fn. 29 (2018) (employer's contumacious failure to produce subpoenaed records regarding the duties of its floor captains warranted adverse inference that they would have corroborated the testimony of employees), enfd. per curiam 779 Fed. Appx. 752 (D.C. Cir. 2019).

documents he placed in the break room (Tr. 43–44, 105–106; GC Exh. 22).[8] Employees clock in and out of work via a computer-based timekeeping system using a computer located outside Brar's office. Employees received individual passwords to clock in and out of the timekeeping system, and only Brar could alter and approve employees' timecards (Tr. 24–25, 158, 244–245). Respondent provided employees' their work schedules 1 week in advance, and these schedules did not include any set times for lunch breaks or other breaks (Tr. 28; GC Exh. 2). At least two receptionists testified that they clocked in and out for their lunch breaks while Williams and Padilla denied doing so (Tr. 290–291, 296, 304, 311). As for overtime pay, the employees did not receive overtime pay even when they worked overtime hours (although Brar claimed that no employees worked overtime hours) (Tr. 369, 385).[9]

2. Padilla's Employment

Respondent hired Padilla in May 2018 as a receptionist and vet tech, earning 14 dollars per hour with no set schedule, and terminated her on October 21 (Tr. 18).[10] Padilla handled client transactions, scheduled appointments, administered vaccines, created estimates for clients, and assisted in animals' blood draws, x-rays, and surgeries (Tr. 19).

When Padilla began working for Respondent, she testified that Brar and "all of the employees on staff" told her that she should find time to eat during downtime (time when there was no work to perform) and that the employees do not clock out for lunch or meal breaks; Padilla would not have scheduled, uninterrupted lunch breaks during her work shifts (Tr. 30, 108, 161).[11] Padilla testified that she specifically asked Brar in approximately June 2018 if

[8] Brar testified that he never asked employees to sign policies or notes from him (Tr. 252–253). However, Swart's text message to her coworkers shows that in January Brar wanted all employees to sign a note regarding when appointments should be scheduled (GC Exh. 22). Thus, I do not credit Brar's testimony as it is directly contradicted by Swart's contemporaneous text messages to her coworkers to sign a document as ordered by Brar.

[9] Whether Respondent violated State or Federal laws concerning lunch breaks and/or overtime pay to eligible employees will not be addressed in this matter.

[10] I relied on most of Padilla's testimony in determining these findings of fact as I found her testimony credible. Padilla testified consistently and calmly throughout her direct and cross-examination; Padilla did not become flustered when being cross-examined. Padilla provided details as to the events relevant in this complaint. Padilla appeared to be a confident and authentic witness who stood her ground as to her recall of events which gave credence to her testimony. Furthermore, Padilla's testimony is corroborated by documentary evidence including her text messages with Brar as well as screenshots of her online timesheets and the police incident report. However, I cannot credit her testimony of when she learned about Respondent's removal of Williams from the work schedule.

[11] In contrast, Swart, who is a salaried employee, testified that she trained Padilla and other new employees to clock in and out for lunch (Tr. 322–323). I cannot rely on portions of Swart's testimony for several reasons. Swart provided vague and defensive responses to questions from Counsel for the General Counsel. Some portions of her testimony appeared rehearsed as if she sought to provide the correct answers for Respondent, which still employs her. When questioned as to the actual practices of employees, Swart did not know if these employees clocked in and out for lunch (Tr. 316–317, 322). Swart cited to the non-existent employee manual which she claimed mandated a 30-minute meal break even though she testified that she informed Padilla that she could take 1-hour lunch breaks (Tr. 323). Even if I am to accept Swart's testimony as credible, Brar, who approved Padilla's timecards, never spoke

employees earn overtime pay and clock out for lunch breaks (Tr. 35). Brar told her that at Respondent she would not earn overtime pay and would not clock out for lunch breaks because Respondent's policies differ from other animal hospitals and clinics (Tr. 35). As a result, Padilla did not clock out for her meal breaks except "less than a handful of times" when she clocked out due to a need to leave the facility (Tr. 30–31, 113). Padilla testified that she often had no backup to cover the reception desk. Thus, Padilla rarely clocked out for lunch breaks, and would not receive a scheduled, uninterrupted lunch break during her work shift. Moreover, Brar informed her that she needed to remain at the reception desk when no other employees were available (Tr. 96–97).[12] Regarding overtime, Padilla testified that sometimes she worked more than 8 hours per day but was not paid overtime (Tr. 25). Since Padilla assumed that Brar's policies, which he described to her, on overtime and meal breaks were permitted, Padilla did not discuss these issues with any coworkers until early October when Williams raised her own concerns to Padilla (Tr. 97, 347–348).

3. Williams' Employment

Williams, who was referred to the position by Padilla and interviewed and hired by vet tech Luis Cordova (Cordova), began working at Respondent on September 9 as a receptionist;[13] she worked Mondays through Wednesdays from approximately 4 p.m. to midnight, earning 13 dollars per hour (Tr. 32, 147–149, 202, 338; GC Exh. 13–14).[14] Williams testified that Cordova explained the job duties of the position for which she was hired, telling her that as a receptionist she would only interact in a minor way with the animals such as holding them down during a procedure or taking their weight but would not be acting as a vet tech, including not participating in surgeries (Tr. 149, 162, 206).[15]

When Williams began working for Respondent, Padilla assisted in training her, and they would work together approximately 2 days per week (Tr. 33). At the start of her employment, Williams learned from Padilla, Cordova and Brar that she would not get paid overtime (although

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to Padilla about the need to clock in and out for lunch breaks; he never disciplined Padilla for not clocking in and out for lunch breaks.

[12] In contrast, Brar testified that 99 percent of the time receptionists worked in pairs and were rarely alone (Tr. 370–371). Swart testified that there is never a time when a receptionist who needs a lunch break is prevented from doing so due to lack of coverage (Tr. 322). Two other receptionists, Maddy Davich (Davich) and Celia Prieto (Prieto) testified that they could clock out and take their meal breaks during their shifts (Tr. 290–291, 296, 304, 311). Based upon the collective consistent testimonies of Brar, Swart, Davich and Prieto, it appears that these employees never had difficulty taking their lunch breaks. However, such testimony does not contradict the credible testimony of Padilla and Williams that they could not take their meal breaks regularly and were informed not to clock out for those meal breaks.

[13] Williams testified credibly and consistently throughout her testimony. Although Williams appeared flustered and irritated during cross-examination, her testimony remained uncontradicted and corroborated by the documentary evidence such as her text messages with Brar. Thus, I credit Williams' testimony when in conflict with Respondent's witnesses.

[14] Brar testified that Williams held the positions of veterinary assistant and veterinary receptionist (Tr. 334–335). Regardless of her job title, Williams had been informed by Cordova what her job duties would be.

[15] Cordova did not testify. However, Swart and other receptionists testified that the amount of vet tech worked performed by the receptionists varied.

she did not work overtime hours) (Tr. 34–35, 164, 209–210). Padilla and other unidentified employees also informed Williams that employees do not clock out for lunch breaks and eat when there are no clients; thus, Williams also never clocked out for her lunch breaks and did not receive scheduled, uninterrupted lunch breaks (Tr. 33, 153, 159–160). Padilla relayed to Williams that she asked Brar "casually" when she started working at Respondent whether employees are paid overtime and whether employees clock out for lunch breaks (Tr. 35). Padilla told Williams that Brar told her that they do not earn overtime pay and do not clock out for lunch breaks based on Respondent's policies (Tr. 35).

In early October, Williams claimed that Brar offered her a pay raise and a 10 a.m. to 10 p.m. shift but would not pay her overtime (Tr. 34, 163–164).[16] Williams declined the offer due to the lack of overtime pay (Tr. 163–164). In contrast, Brar claimed that after 1 to 2 weeks of employment, Williams requested a pay raise if she was required to perform job duties involving animals (Tr. 341–342, 344, 350, 365). Williams denied requesting a pay raise (Tr. 164–165). Brar described the duties that Williams would not perform to include explaining medications to clients, not taking pets from clients, not weighing animals, not putting the animals in the exam rooms and not cleaning (Tr. 343). Brar testified that he informed Williams that she needed to perform these job duties she refused to perform and would consider a pay raise in the future (Tr. 342, 344–345, 346). In response to Brar's refusal, Brar testified that Williams responded rudely and arrogantly, and refused to perform assigned duties (Tr. 346, 366–367). Brar testified that Williams then would only take phone calls and accept payments from clients (Tr. 367). Brar did not issue any warnings to Williams (Tr. 366–367).

Here, I do not credit Brar's version of events. Brar claimed that after he refused to provide Williams a pay raise and reiterated the job duties, he expected her to perform, Williams responded rudely and arrogantly and performed even less job duties than he claimed she needed to perform. Instead of disciplining or terminating Williams for failure to perform her job duties, Brar kept Williams employed and told her he would consider a pay raise in the future once she performed her assigned duties. Due to this implausible response, I do not credit Brar's testimony. Instead, I credit Williams' testimony that she refused Brar's offer of a pay raise and more hours of work without overtime pay. Furthermore, I credit Williams' testimony rather than Brar's testimony due to a subsequent credited discussion, which will be discussed shortly, between Padilla and Williams concerning lunch breaks and overtime.

4. Padilla and Williams Discuss Respondent's Policies on Lunch Breaks and Overtime Pay

Soon after Brar offered Williams a pay raise with increased hours but no overtime pay, Padilla and Williams discussed and complained to one another about Respondent's policies on lunch breaks and overtime pay (Tr. 35, 160–161, 167). Williams commented to Padilla, "Man, we don't get no breaks around here" (Tr. 161). To which Padilla responded to Williams that she needed to take her break when she could and eat when she could (Tr. 161). Williams testified that lunch breaks were "overlooked, not necessarily talked about" (Tr. 161). Padilla told Williams that she did not think it was "fair" and not sure if the policies were "completely legal"

[16] Padilla corroborated Williams' testimony by relaying that Brar offered Williams a 10 a.m. to 10 p.m. shift which prompted a conversation between Padilla and Williams regarding the lack of overtime pay and lunch breaks at Respondent (Tr. 34–**3**5).

but did not question Brar on his policies (Tr. 35). Padilla and Williams testified that they never spoke to Brar about their discussion between themselves (Tr. 97–98, 180, 185). Padilla also testified that from the time between early October to October 18, she did not speak to any coworkers about their complaints regarding lunch breaks and overtime pay. Williams testified that other than her conversation with Padilla in early October, she only spoke to head receptionist Ronnie Swart (Swart) on October 16 about the lack of lunch breaks (Tr. 166–168, 210–211, 213).

5. Williams Discusses Respondent's Policies on Lunch Breaks with Swart during Williams' Last Scheduled Work Shift

On approximately October 16, Williams worked with Swart for the first time (Tr. 155–156, 169). Williams also worked with Cordova and Brar that day (Tr. 168). During that shift, at approximately 5:30 p.m., Cordova asked Williams to assist with euthanizing a dog (Tr. 172). Williams expressed her discomfort with helping with the euthanasia, and Cordova said okay (Tr. 172). Williams spoke to Swart about Cordova's request for assistance, and Swart told Williams that she was also uncomfortable with such tasks (Tr. 172, 205–206). Swart, along with receptionists Celia Prieto (Prieto) and Maddy Davitch (Davitch), testified that they do not perform such tasks (Tr. 295, 310, 319).

Later during this same work shift, another customer brought in two dogs that had been in a fight. Williams and Swart placed the dogs in separate rooms while Brar assessed the situation (Tr. 169–170). When the situation finally calmed at approximately 9 p.m., Williams and Swart complained to one another about not being able to take a break that shift (Tr. 169–170). Williams admitted that she was "super frustrated" during this conversation and complained to Swart that if she would be asked to participate in euthanizing a dog and dog surgeries, she should be paid more as she was not hired for those duties (Tr. 228). However, Williams never asked Brar directly for a higher salary to perform those duties. Williams also testified that she complained to Swart that she was irritated because she never receives a lunch break when she works. Swart asked her why she does not receive lunch breaks. Williams responded that she was never informed how to take a lunch break or when to take a lunch break. Swart told Williams that because Cordova, receptionist Veronica Garcia (Garcia), and she are salaried employees, their meal breaks are handled differently. Swart told Williams that she should complain to Brar about not getting lunch breaks (Tr. 170–171). Thereafter, at approximately 9:45 p.m. to 10 p.m., Cordova asked Williams to help in the exam room with those same dogs. Again, Williams expressed her discomfort and Cordova said okay (Tr. 173). Swart left the facility at 10 p.m. (Tr. 171). Finally, between 10:30 p.m. and 11 p.m., Brar asked Williams to assist with the same dogs who had been in a fight but again Williams expressed her discomfort and Brar said okay (Tr. 174). During this shift, Brar did not tell Williams that she was required to assist him, nor did he tell her that his request was part of her job duties (Tr. 174). At the end of Williams' shift, Brar asked her to return to the facility on Friday, October 18 to pick up her paycheck rather than giving it to her that day which he had done in the past (Tr. 175).

In contrast to Williams' testimony, Swart testified that on the one occasion she worked with Williams, that shift was not hectic, and she could not recall any details from that shift (Tr. 320). Swart denied Williams complaining to her about not being able to take a meal break (Tr. 317–318). Swart also testified that she never observed Williams refusing to perform work

duties but had been informed as such by other employees (Tr. 318). Swart testified that Williams and she did not discuss any subjects concerning work that day (Tr. 320).

I do not credit Swart's testimony. Swart could not recall any details from the only shift she worked with Williams. While it may be reasonable that Swart could not recall details from Williams' last work shift as the shift did not stand out in her mind, Swart also claimed that she knows she did not speak to Williams about their work duties that day nor did Williams speak to her about the lack of meal breaks. It is incongruous for Swart to not recall any events from that work shift but then to also recall what Williams and she did and did not discuss. Swart's selective memory undermines her credibility. Thus, I credit Williams' testimony that she discussed the lack of meal breaks with Swart along with her discomfort in performing certain tasks as a receptionist.

6. Williams' Termination

On Friday, October 18, Williams went into the facility around noon to pick up her paycheck (Tr. 176). Dr. Nitu, who Williams had never met, met her in the reception area (Tr. 177).[17] Swart and Garcia were present as well.[18] Dr. Nitu informed Williams she had her paycheck but also wanted her facility key (Tr. 178). When Williams asked Dr. Nitu why she needed her facility key, Dr. Nitu informed Williams that they had found someone else to cover her Monday to Wednesday shifts. Williams did not have the facility key with her and told Dr. Nitu she would not return that day with the facility key because she did not have the time or money to return that day (Tr. 178–179). Dr. Nitu then offered to compensate Williams for her time to bring the key back to the facility along with any transportation costs. Williams asked Dr. Nitu when she would be working again, but Dr. Nitu was unsure and told Williams that they may call her on Monday, October 21 to inform her when she would be working again. Also, during this conversation, Dr. Nitu informed Williams that they would be mailing her a check to compensate her for her lunch breaks once they determined how many lunch breaks, they owed her. After some back and forth conversation, Williams told Dr. Nitu that she wanted this additional check for her lunch breaks when she returned the facility key around noon on Monday, October 21 (Tr. 179–180).

Williams testified that she did not speak to Brar or Dr. Nitu about her complaints that she did not receive lunch breaks during her work shifts (Tr. 179–180). In contrast, Brar testified that Williams had complained to him directly, and that he did not hear of Williams' complaints from any other employee (Tr. 268–269, 348–349). Brar claimed that during Williams "last day of work or something she claimed additional lunches" (Tr. 263–264). Brar also testified, "[I]t was at the end when [Williams] said, you know, she wanted more – to be paid more for her lunches" (Tr. 348). Brar alleged that Williams was the only employee to complain that she did not get meal breaks so even though he also claimed that she *did* receive meal breaks, he still decided to give her an extra paycheck for the lunch breaks and hoped to continue working with her (Tr. 348). Furthermore, Brar claimed that Williams told Dr. Nitu when she picked up her paycheck that she would not work at that pay level and would not perform the assigned duties (Tr. 368).

[17] Dr. Nitu did not testify.

[18] Garcia did not testify, and Swart was not asked any questions about this interaction.

I do not credit Brar's testimony that Williams complained to him directly that she wanted to be paid more for her lunch breaks. I also do not credit his testimony that no employees informed him that Williams complained about her lack of lunch breaks. Dr. Nitu did not testify, and as an admitted Section 2(11) and 2(13) supervisor and agent for Respondent, I draw an adverse inference that her testimony would not have corroborated Brar's testimony as to what occurred when Williams returned to the facility to pick up her paycheck.[19] Furthermore, as stated above, in discrediting Swart, a totality of the circumstances indicates that Swart likely informed Brar of Williams' complaint of not being able to take lunch breaks. Swart, who could have corroborated Brar's version of events, was not questioned about this interaction between Dr. Nitu and Williams. This lack of corroboration by Swart weakens Brar's claims that Williams' refused to work at Respondent at the pay rate offered and perform the assigned job duties.[20] Even more on point, as discussed further, Brar's subsequent text messages with Williams confirms that he knew Williams had complained about her lunch breaks to a coworker which led to his decision to remove her from the schedule. Thus, I find that Brar had been informed that Williams complained about her lack of lunch breaks and decided to pay her the unpaid lunch breaks when removing her from the schedule and asking for her facility key.

After Williams left the facility around noon, she called Padilla, asking her "what was going on" (Tr. 182).[21] Padilla told Williams that she did not know what was going on, but that Williams should not have been fired and she should be fine. Padilla advised Williams to call Brar to ask him directly (Tr. 182). After Williams could not reach Brar by phone call, Williams sent Brar a text message at 1:47 p.m. asking why she was no longer scheduled to work Monday through Wednesday (GC Exh. 12). Brar responded at 3:57 p.m. that he needed the facility key returned because it would be given to another person and that they were trying to find space in the schedule for Williams to take her "needed breaks and lunch times" (GC Exh. 12). Brar wrote that the staff would contact her with an update on Monday, October 21. Williams responded at 7:33 p.m. by informing Brar that she would bring back her facility key on Monday and proceeded to complain that Dr. Nitu did not act professionally when she spoke to Williams in the presence of Swart (GC Exh. 12).

The following day, Saturday, October 19 at 1:37 p.m., Williams wrote to Brar, "Just letting you know I will exchange the key for my unpaid lunches as well" (GC Exh. 12). Brar responded informing Williams that "as a courtesy" they were giving her a check to compensate her for "anything [she] said about unpaid lunches" even though she did eat her food when she was clocked in; Brar also wrote: "Technical[ly] you were eating your food even clocked in on front desk. It is very well recorded in cameras. But yes, still you will get some extra check for lunch time you did not clock out" (GC Exh. 12). Williams pointed out that she ate her lunch at the reception desk to be able to handle customers "BECAUSE of the fact you guys don't schedule lunch times. I had no choice BUT to work AND eat @ the same time. Regular jobs schedule lunch times I see your company did not have that intact" (GC Exh. 12 (emphasis in

[19] See *Michael Cetta, Inc. d/b/a Sparks Rest.*, 366 NLRB No. 97, slip op. at 9–10 (2018) (adverse inference may be drawn against an employer for failing to call its manager to testify).

[20] See *Stabilus, Inc.*, 355 NLRB 836, 840 fn. 19 (2010) (lack of corroboration by a witness who testified but who failed to testify about an incident may weaken a party's case).

[21] Padilla testified that Williams called her at around 9:30 a.m. to tell Padilla she had been fired (Tr. 36). I credit Williams' testimony that she went to the facility around noon because after her phone call with Padilla, Williams followed her advice by contacting Brar thereafter at approximately 1:45 p.m.

original)). Williams continued that she felt she was doing additional work due to a coworker's illness, and commented, "There are other people as well that eat @ the front desk due to down time as well." Instead of denying Williams' statement regarding lack of scheduled lunch breaks, Brar asked Williams how many lunches she wanted paid, and to not discuss other employees since "[a]ll others are very happy with policy and procedures. It is you who wants lunches paid." (GC Exh. 12). Brar and Williams exchanged further text messages, and Williams reminded Brar that Dr. Nitu told Williams she would be compensated for her transportation costs when she returned her facility key.

At around noon, on Monday, October 21, Williams went back to the facility to return her key (Tr. 186). Both Padilla and Garcia were at the facility. Padilla asked Williams if she was okay, and Williams told her she was okay. Garcia told Williams she was sorry, and Garcia handed Williams the check for her lunch breaks (Tr. 186). Williams left her facility key (Tr. 186). No one from Respondent ever contacted Williams to place her back on the work schedule as stated by Brar and Dr. Nitu (Tr. 186–187). Williams denied quitting her job with Respondent.

In contrast, Brar provided inconsistent testimony as to what occurred during these last few days of Williams' employment. Brar claimed that on Friday, October 18, he expected Williams to inform him whether she was willing to perform "required duties" when she picked up her paycheck, and at what pay rate Williams wanted to perform these "required duties" (Tr. 261, 263, 367–368). Brar also claimed that on Friday, October 18 he expected Williams to inform him whether she would perform these "required duties" with the same pay she had been receiving (Tr. 265–266, 367–368). Brar then claimed that Williams told him that she would not return to work unless she is given a raise (Brar denied her request for a raise), and thus she verbally resigned (Tr. 264, 356, 367–368). Despite his text message to the contrary, Brar denied removing Williams from the schedule due to her need for lunch breaks and other breaks (Tr. 261–262, 347, 367). Here is another example of Brar's complete lack of credibility during this hearing. The text message from Brar directly points to his reason for removing Williams from the schedule—the need to find time for her "needed breaks and lunches," not that she would not perform her required duties, as Respondent now claims. Brar also did not respond to Williams' accusation that he did not schedule lunch breaks, and specifically told her that the other employees were satisfied with Respondent's policies and procedures and that *only she* wanted paid lunches. Brar did not remind Williams during this text message conversation that Williams was supposed to inform Brar that day whether she would perform the "required duties" and at what pay level; rather, Brar responded to Williams' question about why she was not on the schedule that he needed to find where he could accommodate her "needed breaks and lunches." Thus, Brar's claim that Williams quit because she would not perform the "required duties" at her existing pay level is not supported by the record. Brar's silence to Williams' accusations made about Respondent's lunch break policy also support my finding that he did not provide credible testimony. Moreover, since Dr. Nitu did not testify, taking an adverse inference, I find that Williams did not demand on Friday, October 18 additional pay to perform "required duties." Instead, on October 18, Williams arrived at the facility to pick up her paycheck, and after being informed that her facility key needed to be returned, Dr. Nitu also informed Williams that they would be paying her for her unpaid lunch breaks.

Later, Williams filed a complaint with the state labor department. In response to her complaint, on January 15, 2020, Brar provided Williams' timesheets, claiming that Williams clocked in and out for lunch during every shift she worked (Tr. 267; GC Exh. 13). Brar also claimed that Williams left her job because she wanted higher pay, would not perform all assigned duties at her pay level, was rude and hostile to her coworkers with a refusal to change her behavior including how she spoke to her coworkers, and was late for her work shifts (GC Exh. 13). Brar wrote that Williams was given "sufficient meal periods" and permitted to have snacks and breaks even while clocked in (GC Exh. 13). Brar then stated because Respondent could not "support her demands for higher pay, we had to let her go. Which is she left at her own free will" (GC Exh. 13). Brar testified that even though Williams received paid lunch breaks, he paid her extra money and hoped he would "continue working with her" (Tr. 270–271). However, Williams denied the accuracy of these timesheets as Williams testified that she never clocked out for lunch (Tr. 188–189).[22] Brar testified that he could not recall if he clocked out Williams for her lunch breaks (Tr. 275–276). Regarding her job duties, Williams testified that she never refused to perform all duties involving animals, unlike Brar's claim (Tr. 206). Instead, Williams admitted that she would not participate in a euthanasia procedure, dog surgery, and anything involving blood and needles which went beyond the scope of duties Cordova told her she would perform (Tr. 202–203, 207). Williams testified that she assisted in vaccinating animals, giving animals medicine, providing prescription refills, and weighing animals at the start of a visit (Tr. 206–207).

I do not credit Brar's testimony that Williams clocked in and out for meal breaks. The credited evidence shows that Brar decided to pay Williams for her lunch breaks after he learned of her complaint from someone else, likely Swart. If Williams had clocked in and out for lunch as Brar claimed and the timesheets show, there would have been no need to pay Williams an additional check for her lunch breaks. Such a claim is contrary to the credited evidence and makes no logical sense. If Williams would not perform "required duties" as he told her to perform, why would Brar offer Williams additional money to "continue working with her." In addition, contrary to his email to the labor commissioner where he stated that Williams was given "sufficient meal periods" as well as "snacks and breaks even while she was clocked in," Brar emphasized to Williams that *only she* wanted paid lunches, while everyone else was "very happy" with the policies and procedures. Again, Brar's testimony continued with its pattern of inconsistencies and wavering explanations.

7. Padilla's Termination

a. Padilla's Version of Events

On Friday, October 18, Padilla received a call from Williams telling her that she met Dr. Nitu for the first time when she went to pick up her paycheck, and that Dr. Nitu asked for the

[22] Williams submitted a few of her transportation receipts to and from the facility to support her testimony that her timesheets do not reflect the actual times she arrived and departed from the facility, as she alleges that Brar fabricated these timesheets by adding in a meal break (GC Exh. 15). I do not rely upon these receipts as they do not support or contradict Williams' arrival and departure from the facility.

facility key and told her to leave the facility (Tr. 36).[23] After she received Williams' phone call, Padilla spoke to Swart, asking her what happened with Williams but Swart was uncertain (Tr. 37). Padilla told Swart that Williams told her that she had been fired, and that Brar was upset she was complaining about lunches and wanted the facility key back (Tr. 37). Padilla testified that she told Swart that Williams said she would not give the key back until Respondent paid for her lunch breaks (Tr. 37). Padilla then complained to Swart that Williams is her friend, that they all work overtime, that they all do not get paid lunch breaks, and that Brar should have spoken to Williams rather than firing her (Tr. 37–38). Swart shrugged off Padilla's complaint, stating that she did not know what happened but did not think it was fair either (Tr. 38).[24]

Later that day Padilla spoke to Cordova at around 6 p.m. about Williams' termination (Tr. 38).[25] Padilla testified that she asked Cordova if he knew anything about Williams' termination (Tr. 39). Padilla testified that Cordova told her that Swart spoke to Brar about Williams' complaints about lack of lunch breaks and overtime (Tr. 39). Padilla then complained that Brar's treatment of Williams was unfair and that instead he should have spoken to her. Padilla also stated that the receptionists do more than what they should be expected to do. Cordova responded that Williams should not be complaining to her coworkers since she had only been working at Respondent for a short time and everything had been fine thus far (Tr. 39).[26]

On Monday, October 21, at approximately 12:30 p.m., Garcia provided a document to Padilla, telling her that Brar wanted her to sign it (Tr. 42, 100). This document included every employees' name (except Williams') and declared that the employees had always been given adequate meal breaks (GC Exh. 3). The document (Staff Note) states:

> Staff Note
> -
> Every time you want somethings, it's food/snack/lunch break, you are required to clock ut. So far it was going openly. As I did not mind, even any of the team members are actually on paid time and clockedmin but, sitting in break room enjying theitr meal. YOU ARE REQUIRD TO CLOCK OUT AT LEAST ONCE BEFORE REACHING 5 HOURS ON YIUR CLOCK WINDOW.
>
> HERE BY, I ACKOWLEDGE THAT SO FAR I HAVE BEEN ALWAYS GIVEN ENOUGH TIME FOR MEALS DAILY.

[23] Although Padilla did not initially testify to the entire conversation she had with Williams, Padilla's subsequent testimony about her conversations with Swart and Cordova about Respondent's removal of Williams from the facility shows that Williams told Padilla that her lunch breaks were the crux of why Respondent wanted back the facility key.

[24] Swart did not specifically testify about any conversation with Padilla regarding Williams' termination on October 18. I credit Padilla's testimony that she spoke to Swart about William's termination.

[25] Cordova did not testify. Thus, this testimony is hearsay. I credit Padilla's testimony that she spoke to Cordova, but I give little weight to her testimony as to what he told her as it is not corroborated.

[26] Padilla's photo of her timecard shows that she clocked in at 12:20 p.m., on October 21 (GC Exh. 8). The record is unclear whether Garcia asked Padilla to sign this document before or after Williams dropped off the facility key and picked up her lunch break paycheck.

_____ LUIS
_____ VERONICA
_____ RONNIE
_____ CHRISTINA
_____ MADDIE
_____ CELIA

GC Exh. 3 (errors within original)). When Garcia provided the Staff Note to Padilla, the signature lines by Luis (Cordova), Veronica (Garcia), and Celia (Prieto) were already signed.[27] Padilla told Garcia she would not sign the Staff Note because she did not think it was fair, Williams is her friend, and the employees had not been given enough time for meals (Tr. 43–44, 111; GC Exh. 3). Padilla testified that Garcia laughed and said she would place the document on Brar's desk (Tr. 44).[28] Padilla testified that she spoke to Cordova about his signature on the Staff Note. Padilla testified that Cordova told her to sign the document, "you don't want to cause problems. You see what happened to Akilah [Williams]" (Tr. 102).[29]

At approximately 6:30 p.m. that day, Padilla testified that Brar asked her to come into his office to sign the same document Garcia provided to her earlier in the day (Tr. 46–47). Padilla told Brar that she was not comfortable signing the Staff Note and wanted to bring up the subject of lunches and overtime. Brar asked her why she would not sign the Staff Note. Padilla responded regarding clocking out for lunch breaks, "How can I do that if I'm only one at reception" (Tr. 46–47). Brar told her to clock in and out as needed as he needed to "cover" himself (Tr. 47). Padilla responded that he is supposed to give the employees a break of 30 consecutive minutes. Brar told Padilla he did not want to argue and only needed her signature. Padilla refused and Brar told her that he would have to say goodbye to her (Tr. 47, 231). Padilla then asked if he was firing her, and Brar said, "Yes, if you don't want to sign, then I'll need your key and you need to leave" (Tr. 47). Again, Padilla asked if Brar was firing her, and Brar confirmed he was (Tr. 47). Padilla then asked for her payroll records to prove that she was not paid for her lunches and for overtime but Brar refused to provide these records to her and told

[27] Prieto denied reviewing or signing the Staff Note that Padilla testified Garcia showed her on October 21 (Tr. 292; GC Exh. 3). However, Prieto's W-4 signature, which Prieto admitted signing, is comparable to her signature on the line next to Prieto's name on this Staff Note (GC Ex. 3, 17: Tr. 301). In addition, Cordova's signature on the Staff Note is comparable to his signature on his W-4 form (GC Exh. 18). Swart and Davich testified that they had never seen this Staff Note (Tr. 306, 315). The Board has long held, consistent with Section 901(b)(3) of the Federal Rules of Evidence that a judge may determine the genuineness of signatures on authorization cards by comparing them to W-4 records from the employer's records. See *Traction Wholesale Center Co.*, 328 NLRB 1058, 1059 (1999), enfd. 216 F.3d 92 (D.C. Cir. 2000). Although this matter does not concern authorization cards, I find that in a similar vein the W-4 signatures of Prieto and Cordova match their signatures on the Staff Note, and thus their signatures have been authenticated. Regardless of whether the signatures may be authenticated, as discussed further, I credit Padilla's testimony that Brar told her to sign this Staff Note later that evening of October 21.

[28] Garcia did not testify.

[29] Again, Cordova did not testify, and this testimony is uncorroborated hearsay to which I give little weight.

her that they would need to go to court to deal with the records (Tr. 46–48).[30] Padilla then turned to leave, and Cordova was standing in the doorway. Padilla said goodbye to Cordova, took her bag from the break room, and gave Cordova her facility key (Tr. 48). Padilla left the facility at approximately 7 p.m.[31]

The following morning, on Tuesday, October 22, at approximately 9 a.m., Padilla went back to the facility to retrieve her jacket and a cell phone charger she had left behind (Tr. 50–51).[32] After speaking briefly with Garcia about her termination, Padilla told Garcia that she wanted to take a picture of her timesheet hours. Thereafter, Padilla walked from the reception area to the break room, took her cell phone charger, took a picture of her work hours which were displayed on the computer next to the break room, went to the treatment room to get her jacket, and went through the x-ray room to Brar's office (Tr. 50–51). In Brar's office, Padilla took a picture of the same document, located on his desk, he told her to sign the prior day (Tr. 51; GC Exh. 19). Padilla also noticed on Brar's desk another document like the one he asked her to sign the day before, but this version did not have lines for employees' signatures (Tr. 51–52; GC Exh. 4).[33] Padilla took a picture of this document as well (Tr. 51–52).[34] Padilla then went to Respondent's certified professional accountant's (CPA) office to obtain her payroll records (Tr. 51–54). The CPA's office informed Padilla she would need to obtain the payroll records directly from Respondent or with a court order (Tr. 58). Padilla then went to the NLRB office.

Between approximately 11 a.m. and 11:30 a.m., Padilla received a phone call from the Alameda County Sheriff's Department (Tr. 58). The officer informed Padilla that Brar had accused Padilla of stealing $200 from the facility on October 21, after his daily transactions came up short, as he had caught her stealing money and told her to put the money back (Tr. 58–59). Police records indicate that Brar called the Alameda County Sheriff's Department first on October 22 at 11:12 a.m. (GC Exh. 6). According to the police incident report, Brar only wanted Padilla contacted and advised not to return to the facility (GC Exh. 6). Padilla denied stealing the money (Tr. 50, 59). The officer told Padilla that they were not taking the allegation seriously

[30] Brar inconsistently testified that he first learned from his CPA that Padilla wanted her payroll records the day after her termination, and then later Brar testified that he did not learn Padilla wanted her payroll records until November 7 when she asked for her payroll records (Tr. 276–278). Again, Brar's inconsistent testimony reinforces my determination that he is not a credible witness.

[31] Padilla's timecard report indicates that she clocked out at 7:03 p.m., on October 21 (GC Exh. 7). In addition, Padilla's photo of her timecard, which she took on October 22, shows that she clocked out at 7:03 p.m. (GC Exh. 8).

[32] Brar learned Padilla came back into the facility from Garcia (Tr. 279).

[33] Brar claimed that he never saw the following document which Padilla testified was also found on his desk (Tr. 284). This document states:

Staff Note

Every time you want to eat some things – it's food / snack /lunch break. You are required to clock out.

So far it was just going openly. As I did not mind, even any of the team members are actually on paid time and clocked in but sitting in break room and enjoying their meal.

You are required to clock out at least once before reaching 5 hours on your clock in window (GC Exh. 4).

[34] The time stamp on these two screenshots show the photos were taken on October 22 at 8:50 a.m. and 8:51 a.m. (GC Exh. 19).

but that she should not return to the facility (Tr. 58–59). Padilla testified that when Brar fired her on October 21, he never accused her of stealing money.

Following her conversation with the officer from the Alameda County Sheriff's Department, Padilla sent Brar text messages beginning at 11:35 a.m. (GC Exh. 5). Padilla confronted Brar with his accusation that she stole money from the cash drawer. Padilla wrote, "You know damn well that no cash was stolen. […] im very disappointed in the behavior you're taking, to go so far as lying about cash. I have never been a thief and was always a good employee. It's unfortunate we will have to be going through court […]" (GC Exh. 5). Brar did not respond to Padilla's text messages (GC Exh. 5).

On November 7, Padilla sent Brar another text message, asking again for her payroll records. Brar responded to Padilla's text message telling her not to contact him directly, that he reported her "case" to the authorities already, and to contact his attorney directly. Brar further wrote, "Any direct contact / communication to me will be taken as threatening message and we are reporting to police immediately" (GC Exh. 5). Padilla responded to Brar's text message asking for his attorney's contact information. Padilla further told Brar that she knew that there was no "case" against her, she had made no threats, and only requested her own payroll information. Brar responded with a series of text messages insulting Padilla, chiding her for going to his CPA, claimed that he had reported her to the "authorities" and filed a police report on the "same day of incident," and told her to find his attorney's contact information herself (GC Exh. 5). Brar wrote that he would be blocking her cell phone number.

Later the night of November 7, between 10 p.m. and 11:00 p.m., Padilla received another phone call from an officer from the Alameda County Sheriff's Department. The officer informed her that they were receiving claims from Brar that Padilla was calling and texting Brar and sending threatening messages to Brar and his family. Padilla denied these accusations and offered her cell phone records to the officer. The officer told Padilla that the accusations were not being taken seriously but that she should not contact Brar again (Tr. 64).[35]

b. Brar's Version of Events

As for Brar's version of events, Brar testified that Prieto, Davich and another employee told him that Padilla was telling employees not to clock out for lunch (Tr. 232).[36] Thus, on October 21 at 6:30 p.m., Brar, who was in his office, asked Padilla to sign a document (a warning letter) which was still on his computer screen. Brar testified that Padilla refused and would not look at the document on his computer screen (Tr. 232–233, 285–286). Brar claimed that the warning letter he wanted to show Padilla, addressed only to her, advised her about several of her alleged actions in the workplace including: eating in the breakroom immediately after arriving at work, not clocking out for lunch, encouraging other employees to eat lunch or

[35] The police records indicate the Brar and Padilla were advised not to contact one another (GC Exh. 6).

[36] Inconsistently, Brar testified that no employees came to him expressing any concerns or issues Padilla had with her meal breaks (Tr. 348). Furthermore, when asked, Davich testified that she did not have any conversations with anyone about clocking in and out for lunch breaks (Tr. 306). Thus, Brar's testimony that employees informed him that Padilla was telling employees not to clock out for lunch is not corroborated by other employees as well as being contradicted by himself.

leave the facility to buy and eat lunch without clocking out, talking on her cell phone while clocked in, rude behavior towards customers and coworkers, and arriving late for her shift (R. Exh. 1); Brar denied ever seeing the Staff Note Padilla testified that Garcia showed her and asked her to sign (Tr. 251, 283–284; GC Exh. 3). Brar testified that after Padilla refused to sign this warning letter, she went back to work for 40 to 50 minutes in the treatment room (Tr. 234). Brar testified that he never threatened to terminate Padilla for not signing the warning letter and only sought to give her a warning about telling employees to not clock out for lunch (Tr. 244, 357).

Thereafter, Brar claimed that he saw Padilla come into his office at approximately 7:30 p.m., take money from the cash drawer and place "bills" in the right-side pocket of her scrubs (Tr. 234–235). Brar testified that he did not question Padilla, but instead told her to put the money back into the cash drawer (Tr. 235). According to Brar, Padilla put the money back and went into the reception area while Brar sat at his desk in his office, thinking about what he should do (Tr. 236–237). Brar testified that he then counted the money Padilla placed back into the cash drawer and decided that Padilla removed $450 as she had removed $100 and $50 bills (Tr. 379).[37] Brar called Padilla back into his office and told her to leave the facility (Tr. 236). Brar testified that Padilla simply said "okay" and left the facility (Tr. 237). Afterwards, Brar counted the cash drawer and alleged he was $200 short based on his logbook, and decided to call the police (Tr. 238, 377).[38] Brar testified he called the police at 10 p.m. on October 21 (Tr. 239).[39] The following morning, on October 22, the police came to the facility to speak to Brar about his allegation against Padilla (Tr. 239).

Brar testified that the sole reason for terminating Padilla on October 21 was because she stole money from the facility (Tr. 231, 284–285).[40] Brar claimed that he was giving a warning letter to Padilla on October 21 for telling coworkers not to clock out for lunch breaks, and that he did not terminate her for this action (Tr. 244). Brar testified that on that same day, October 21,

[37] Brar's sworn statement to the Board, provided on December 11, provides yet another version of events. In the December 11 statement, Brar stated that after he accused Padilla of stealing, she placed $250 back into the cash drawer (Tr. 242–243). Brar's inconsistent testimony undermines his credibility.

[38] Brar testified that he, along with Garcia, used the logbook twice daily. Brar testified that he used the logbook to determine that the cash drawer was short money when he alleged to the police that Padilla stole money, but he did not provide the logbook in response to the General Counsel's subpoena duces tecum request for all documents relied upon when making the decision to terminate Padilla (Tr. 374–376). As Respondent failed to produce the logbook per the subpoena request, I draw an adverse inference that such evidence does not support Brar's testimony. See *Metro-West Ambulance Service*, 360 NLRB 1029, 1030 and fn. 13 (2014) (employer's unexplained failure to produce subpoenaed accident reports over the previous 3½ years warranted an adverse inference that they would not have supported the employer's position that it treated the discriminatee the same as other similarly situated employees). Even if I decline to draw an adverse inference, I would not credit Brar's testimony as Padilla, Williams, Swart and Prieto all testified that to their knowledge there was no procedure such as a logbook for tracking money in the cash drawer (Tr. 59–60, 199–200, 299, 325).

[39] Police records indicate that Brar complained to the Alameda County Sheriff's Department on October 22 at 11:12 a.m., not on October 21 at 10 p.m. as he claimed (GC Exh. 6). Brar's failure to recall the day on which he called the police is another example of his lack of credibility.

[40] Prieto, who was working the night of October 21, testified that she did not see Padilla steal money, nor did she hear anyone accuse Padilla of stealing money (Tr. 298–299).

after Padilla took money from the cash drawer, he decided to terminate her employment (Tr. 237). Then, Brar decided to call the police because his cash drawer was short $200 (Tr. 238).

On about October 29, Brar created identical statements for the employees to sign regarding Padilla (GC Exh. 16).[41] The statements state, in part, "I have seen her multiple times sitting in break room, even though she is clocked in and on paid time. I have also seen her on multiple times eating her meals even when she is clocked in and on paid time" (GC Exh. 16).[42]

Brar also testified that Padilla threatened his family on November 7 which caused him to call the police. He justified his accusation by explaining that he fired Padilla one day and the next day, October 22 she came into the office which amounted to threatening behavior (Tr. 268).

c. Credibility

I do not adopt Brar's testimony and rely upon Padilla's version of events in their entirety. I credit Padilla's testimony that Brar wanted her to sign the Staff Note she was shown by Garcia, not the document he claimed was a warning letter for her. Brar's testimony simply cannot be credited. In addition to the specific footnotes above where Brar's testimony is shown to be inconsistent with the credited evidence, most glaring in Brar's testimony is his incredible behavior when he claimed Padilla stole money from the cash drawer: After Padilla refused to look at the warning letter he wanted to issue to her, she went back to work for 40 to 50 minutes. Then after he claimed he saw her take money from the cash drawer, he told her to put it back. She then went back to work. Brar then counted the money he testified she placed back in the cash drawer and decided to tell her to leave. Padilla responded, "Okay." Thereafter, he decided to reconcile the cash drawer and decided that money was missing which prompted him to call the police approximately 2 hours later.

The amount of missing money varied from what Brar reported to the police in October, his Board affidavit in December, and his March 2020 hearing testimony. In addition, the police incident report indicates that Brar called the police the following morning, not the night of the alleged incident as he testified. Furthermore, the timing of events is inaccurate as Padilla's timesheets show that she clocked out at around 7 p.m., whereas Brar's testimony is that he fired Padilla at 7:30 p.m. Brar also claimed that Padilla did not deny stealing the money and did not make any protest of the accusation against her. This alleged reaction by Padilla on October 21 is inconsistent with Padilla's text message to Brar on October 22 when she sent him an angry text message denying that she stole any money, to which he did not even reply. I find it more likely than not that Brar called the police after Padilla returned to the facility on October 22 to pick up her personal belongings as well as to take photos of her timesheet, as she told Garcia. Shortly after Brar called the police, the police called Padilla informing her of the allegation and not to return to the facility. Such timing does not support Brar's claim that he saw Padilla steal money, fired her and then called the police, all within a few hours. Furthermore, to support my finding that Brar lacked candor, Brar alleged that Padilla threatened his family but cites to her return to the workplace on October 22 as the basis for his claim. Brar provided no evidence that Padilla

[41] These statements reference Respondent's termination of Padilla in January for allegedly denying appointments to clients but Brar rehired her soon thereafter (Tr. 337).

[42] However, Garcia's statement does not contain this claim.

threatened him or his family and appeared to contact the police with the threat allegation only after Padilla sent him a text message on November 7, asking for her payroll records. Hence, I do not credit Brar's version of events.

d. Padilla's Timecards

On November 27, Brar's attorney provided Padilla with her timecard report covering the period of her employment (GC Exh. 7). Padilla testified that her clock in and out times did not accurately reflect her actual clock in and out times when she was employed by Respondent; the report indicated that she clocked in and out for lunch breaks during each shift. Padilla testified consistently that she did not clock out for lunch, except on rare occasions, while she was employed (Tr. 67, 119). Padilla provided screenshots of her online timeclock for various weeks of her employment (GC Exh. 8); these screenshots do not show clock in and out times for lunch breaks except for her last week of employment where she is shown twice to take lunch at 1 a.m.[43] One example of a discrepancy is on August 27: Padilla's screenshot of her timeclock shows that she clocked in at 10:14 a.m. and clocked out at 8:40 p.m. with no lunch break (GC Exh. 8). However, the timecard report submitted by Respondent shows that on August 27, Padilla clocked in at 10:14 a.m., clocked out for lunch at 3 p.m., clocked back in at 4 p.m., and clocked out at 9 p.m. (GC Exh. 7).

In contrast, Brar testified that Padilla clocked out for lunch every day for 30 minutes to 1 hour, depending on how long she chose (Tr. 245, 271). But Brar also claimed that he observed Padilla eating her lunch on numerous occasions without clocking out and then she would clock out for another lunch break (Tr. 245–246). Brar claimed that he told Padilla to clock out for lunch on at least 50 occasions (Tr. 246–247). Brar speculated that the time clock on the time and attendance software could be manipulated based on the computer used (Tr. 274–275). Brar admitted that if an employee does not clock out for lunch before working 5 hours, he will go into the employee's timesheet and clock them out himself whether the employee takes a lunch break or not (Tr. 267). Brar also claimed he would tell the employee to take a lunch break (Tr. 267–268). Specifically, regarding Padilla, Brar admitted that he would clock out Padilla for lunch breaks when she did not do so herself and monitored Padilla's lunch breaks almost every day (Tr. 268, 271–272). Brar testified he would clock out Padilla for lunch before she completed 5 hours of work (Tr. 272).

Again, Brar's testimony is jumbled, and I do not credit his testimony that Padilla clocked out for lunch every day. Brar testified that he sought to warn Padilla on October 21 about numerous problems he had with her in the workplace; one of these alleged problems was not clocking out for lunch. Yet, Brar claims that Padilla *did* clock out for lunch every day, and that she knew to clock out for lunch every day. However, Brar then admitted that he would clock out Padilla for lunch when she did not clock out herself. Assuming Brar had to frequently add these lunch breaks to the timecards, as he claims, it would seem logical that Brar would speak to Padilla about the need to clock in and out for lunch breaks. Brar's lack of candor and clear

[43] Padilla also submitted her transportation receipts to support her claim that Brar fabricated the hours on her timesheets (GC Exh. 10). I do not rely upon these transportation receipts in determining whose testimony to credit. These records are not sufficiently specific, and thus, I decline to give them any weight in this decision.

alteration of Padilla's timecards completely obliterates any hope for my crediting any of his testimony. The inconsistencies demonstrated by the timecard screenshots when compared to the timecard report provided by Respondent lends credence to Padilla's claim that Brar fabricated her clocking in and out for lunch.

B. Analysis

Padilla and Williams Engaged in Protected Concerted Activity for the Purpose of Mutual Aid and Protection and Respondent Had Knowledge

Before discussing whether Respondent's conduct towards Padilla and Williams violated the Act as alleged, I must first address the issue of whether they engaged in protected concerted activity.

Section 7 of the Act protects the right of employees to engage in "concerted activity" for the purpose of collective bargaining or other mutual aid or protection. For an employee's activity to be "concerted" the employee must be engaged with or on the authority of other employees and not solely on behalf of the employee himself. *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The statute requires the activities to be "concerted" before they can be "protected." *Bethany Medical Center*, 328 NLRB 1094, 1101 (1999). The Board has held that activity is concerted if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself. *Meyers I*, supra; *Meyers II*, supra; *Quicken Loans, Inc.*, 367 NLRB No. 112, slip op. at 3 (2019) (citations omitted) (profanity laced statement by single employee concerning customer call routed to him was not protected or concerted as employees as a group had no preexisting concerns about customer calls, and no evidence that employee sought to initiate or induce group action); *Alstate Maintenance, LLC*, 367 NLRB No. 68, slip op. at 2 (2019) (employees' complaint about airline passengers' tipping habits not concerted). The question of whether an employee has engaged in concerted activity is a factual one based on the totality of the circumstances. *National Specialties Installations, Inc.*, 344 NLRB 191, 196 (2005). The Act protects discussions between two or more employees concerning their terms and conditions of employment. Whether an employee's activity is concerted depends on the way the employee's actions may be linked to those of his coworkers. *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). "[W]hether an employee's activity is 'concerted' depends on the manner in which the employee's actions may be linked to those of his coworkers…. The concept of 'mutual aid or protection' focuses on the *goal* of concerted activity; chiefly, whether the employee or employees involved are seeking to 'improve terms and conditions of employment or otherwise improve their lot as employees." Id. Concertedness is analyzed under an objective standard. *Fresh & Easy Neighborhood Market*, supra at 154. Employees act in a concerted manner for a variety of reasons, some altruistic and some selfish. Id. citing *Circle K. Corp.*, 305 NLRB 932, 933 (1991), enfd. mem. 989 F.2d 498 (6th Cir. 1993).

Respondent argues that Padilla was not engaged in protected concerted activity for the purpose of mutual aid or protection when she refused to sign the Staff Note because she was not "part of a group that refused to sign, or that she raised the issues about the document jointly with

other employees, or that she did anything other than decline to sign the document on her own" (R. Br. at 15). Respondent also argues that Padilla and Williams only sought to benefit themselves and did not bring a group complaint to Respondent (R. Br. at 16). Respondent attempts to narrowly view Padilla and Williams' actions without considering the entire situation. Based on Board precedent, I disagree with Respondent's arguments as discussed below. Padilla and Williams' activity cannot be viewed in a vacuum but rather viewed under a totality of the circumstances.

Both Padilla and Williams clearly engaged in concerted activity which is protected. Padilla, in June 2018, 1 month after being employed by Respondent, first asked Brar whether employees clock out for meal breaks and earn overtime. Brar responded that Respondent's policy was that she should not clock out for meal breaks and would not earn overtime as policies vary by animal hospitals and clinics. Padilla did not question Brar, as he was her supervisor, and followed his direction. Thus, she did not clock out for her meal breaks and was never told to do so, as Brar claims. As for Williams, when she was hired in September, she was informed by Padilla as well as other employees that she should not clock out for meal breaks and would not earn overtime. Padilla, who had prior concerns about Respondent's lunch break and overtime policies, informed Williams that she had asked Brar about these policies when she began her employment, but Brar told her that these were the policies of Respondent: do not clock out for meal breaks and no employees earn overtime pay. Thus, Padilla and Williams, at that time, admittedly did not pursue the issues of meal breaks and overtime pay with coworkers or with Brar.

However, approximately 1 month after she was hired by Respondent, Brar offered Williams a raise and more hours of work. Upon learning that she would not earn overtime pay, Williams declined Brar's offer. When Williams told Padilla about Brar's offer, the two employees then complained to one another about Brar's policies. Padilla articulated concerns during this conversation that Brar's policies were not fair and expressed skepticism if the policies were legal. Again, after their discussion, Padilla and Williams did not discuss these concerns with any coworkers or with Brar.

But, a couple weeks later, during a particularly difficult work shift, Williams complained to Swart, with whom she had never worked, about the lack of meal breaks as well as intense tasks Respondent asked her to perform that night. Swart encouraged Williams to talk with Brar about her concerns. Swart and Williams' conversation concluded, and eventually the work shift ended. Before Williams could take Swart's advice and discuss her concerns regarding her lunch breaks with Brar, Brar removed her from the work schedule. Williams was informed that she would be placed back on the schedule when they could find time for her "needed breaks and lunch times." Williams challenged Brar with his lack of scheduled lunch breaks to which he told Williams to leave the other employees out of the issue because they were satisfied with his policies and procedures.

Once Williams told Padilla that she had been effectively terminated, Padilla began complaining to Swart, Cordova and Garcia about Brar's treatment of Williams as well as the unfairness of Respondent's policies on meal breaks and overtime. Moreover, when Brar told Padilla to sign the Staff Note, she refused, directly informing him that she wanted to discuss overtime and meal breaks with him, and his claim, according to the Staff Note, that employees

received meal breaks was inaccurate. Ultimately, Padilla's actions led to her termination when she refused to sign the Staff Note.

The evidence in this matter is clear that Padilla and Williams engaged in protected concerted activity for mutual aid and protection. Padilla and Williams' actions to complain about their working conditions with one another in early October may not be considered to be protected concerted activity for mutual aid or protection as there is no evidence at that time that the employees had a goal of seeking to improve the terms and conditions of employment. However, once Williams complained to Swart, and Padilla complained to Swart, Cordova and Garcia, their discussions shifted to a goal of improving their terms and conditions of employment, even if no other employees agreed or experienced the same working conditions. Under Board precedent, concertedness "…is not dependent on a shared objective or on the agreement of one's coworkers with what is proposed." *Fresh & Easy Neighborhood Market*, supra at 153–154. Thus, Padilla and Williams engaged in protected concerted activity to improve their working conditions for mutual aid and protection. See *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 863 (2000), enfd. 262 F.3d 184 (2d Cir. 2001) (concerted activity found where discriminatee did not raise "purely personal concerns" but rather "espoused the cause of the hourly shop employees" and sought to have the new break policy applied "fair[ly] to all employees.").

Contrary to Respondent's argument that Padilla and Williams only discussed their own situation for their personal benefit, Padilla and Williams' complaints were not personal gripes, which defeat a finding of protected concerted activity, but were complaints that applied to the employees. Moreover, Padilla and Williams complained to other employees about Respondent's policies regarding meal breaks and overtime. In *Alstate Maintenance*, supra, cited by Respondent, the Board found that under *Meyers II*, "[w]here a statement looks forward to no action at all, it is more than likely mere griping." See also *Mushroom Transportation Co., Inc.*, 330 F.2d 683, 685 (1964) ("Activity which consists of mere talk must, in order to be protected, be talk looking toward group action … [i]f it looks forward to no action at all it is more likely to be mere 'griping'."); *Quicken Loans*, supra (Board found that an employee's profanity laced statement regarding a customer call routed to him in the presence of another employee and supervisor did not amount to protected concerted activity as there was no evidence that the employee had any preexisting concerns on the matter and did not seek to initiate or induce group action). Here, when reviewing the totality of the circumstances it is apparent that Padilla and Williams discussed with one another on at least one occasion as well as with multiple employees the "unfair[ness]" of not receiving meal breaks. Swart even advised Williams to speak with Brar about her lack of meal breaks but before she could do so she was removed from the schedule. The requirement that activity must be engaged in with an object of initiating group action does not disqualify the preliminary discussions one would expect employees to have from protection under Section 7. Since every concerted action for mutual aid or protection must start with some communication between employees, it would essentially void the rights of organizing and collective bargaining by Section 7 if such communications were denied protection due to lack of realization. *Mushroom Transportation Co.*, supra. Even thereafter, Williams, when asking why she was no longer on the schedule, replied that Respondent did not schedule meal breaks like other employers. Brar told Williams to leave other employees out of their discussion because the other employees are "very happy with the policy and procedures." Williams' conduct, even after being removed from the schedule, demonstrates that she engaged in protected concerted activity

seeking mutual aid or protection to "improve their lot as employees." *Eastex Inc. v. NLRB*, 437 U.S. 556, 567 (1978). As for Padilla, she also was not griping when she discussed the lack of meal breaks with Williams and others. In that same vein, Padilla refused to sign the Staff Note where she would be denying her claim that she was not given meal breaks. Thus, Padilla, also engaged in protected concerted activity seeking mutual aid or protection.

Furthermore, despite Respondent's denials, Brar had knowledge of Padilla and Williams' protected concerted activities (R. Br. at 17–18). An employer's knowledge of protected conduct can be inferred from the timing of its actions against the employees who engaged in the conduct and the pretextual nature of its defenses. See *Coastal Sunbelt Produce, Inc.*, 362 NLRB 997, 998 (2015). The record contains ample evidence through direct and indirect evidence that Brar, who was the decision maker in these actions, knew about Padilla and Williams' protected concerted activities—specifically, Williams' discussion with Swart, and Padilla's discussion with several of her coworkers about Respondent's unfair policy on meal breaks as well as her refusal to sign the Staff Note. Beginning with Williams, when she went to pick up her paycheck on Friday, October 18, Dr. Nitu told Williams that they would be providing her with an additional check for her lunch breaks. Thereafter, Williams sent a text message to Brar, asking why she was removed from the work schedule. Brar wrote that Respondent was trying to determine where they could place her on the work schedule so she could take her "needed breaks and lunch time." Williams never claimed that she complained to Brar about the lack of lunch breaks, but she did complain to Swart 2 days prior, on her last work shift. When Williams challenged Brar about his lack of scheduled lunch breaks, causing her to work and eat at the same time without an uninterrupted break, Brar told Williams that other employees were "very happy" with the policies and procedures and *only she* wanted paid lunches. Brar's written word is proof that he knew Williams complained to Swart about her lack of lunch breaks. Thus, Brar had knowledge of Williams' protected concerted activity. As for Padilla, indirect evidence shows that Brar learned from the employees that Padilla complained about the unfairness of the lunch break policy when she discussed with coworkers the circumstances surrounding Brar's removal of Williams from the work schedule. Three days later, Garcia presented Padilla with a Staff Note that Brar wanted Padilla and the employees to sign. This Staff Note told employees that they were required to clock out when they ate and clock out at least once before working for 5 hours. Furthermore, the Staff Note stated that employees *had* been given enough time for meals during each of their shifts. Padilla vehemently disagreed with the contents and told Garcia her reasons. That evening, Brar told Padilla to sign the Staff Note, and when she refused, explaining that Brar's policy of not permitting employees to take an uninterrupted lunch break was not appropriate, Brar terminated her employment. Padilla kept pursuing her claims of inadequate meal breaks by requesting her payroll records from Brar and then Respondent's CPA; her requests were denied until she ultimately received them from Respondent's counsel. Brar's knowledge of Padilla's protected concerted activity is unmistakable.

Respondent Violated Section 8(a)(1) When Brar Terminated Williams on October 18 and Padilla on October 21, Threatened Padilla With Termination on October 21, and Falsely Reported Padilla to the Police on October 22 and November 7

Now that I have found that Padilla and Williams engaged in protected concerted activity of which Respondent was aware, I will evaluate the General Counsel's theory that animus

towards this activity was a substantial or motivating factor in Respondent's subsequent treatment of the two women.

When more than one motive exists for the alleged discriminatory action for protected concerted activity, a mixed motive analysis applies. Under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the General Counsel has the initial burden to show that an employee's protected activities were a motivating factor in the employer's actions against him. The requisite elements to support a finding of discriminatory motivation are union or other protected concerted activity by the employee, employer knowledge of the activity, and animus on the part of the employer. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 2–3 (2019). To support its initial burden under *Wright Line*, "the General Counsel must prove by a preponderance of the evidence that union animus was a substantial or motivating factor in the adverse employment action." *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). "Motivation is a question of fact that may be inferred from both direct and circumstantial evidence." *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 780 (8th Cir. 2013) (internal quotations omitted). Circumstantial evidence of discriminatory motivation may include evidence of: suspicious timing; false or shifting reasons provided for the adverse employment action; failure to conduct a meaningful investigation of alleged employee misconduct; departures from past practices; tolerance of behavior for which the employee was allegedly fired; and/or disparate treatment of the employee. See *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 4, 8 (2019); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). The evidence must be enough to establish a causal relationship exists between the employee's protected concerted activity and the employer's adverse action against the employee. *Tschiggfrie Properties*, supra at slip op. at 8.

If the General Counsel makes the required showing, the burden of persuasion then shifts to the employer to demonstrate, as an affirmative defense, that it would have taken the same action even absent the employees' protected conduct. *Wright Line*, supra at 1089; see also *Electrolux Home Products*, supra at slip op. at 3; *National Hot Rod Association*, 368 NLRB No. 26, slip op. at 4 (2019) (citations omitted) (an employer need not prove the disciplined employee had committed the alleged misconduct but only needs to show it had a reasonable belief that the employee committed the alleged offense and then it acted on that belief). The General Counsel may offer proof that the employer's reasons for its decision are false or pretextual. When an employer's stated reasons are found to be pretextual, discriminatory motive may be inferred but such an inference is not compelled. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) ("if [a trier of fact] finds that the stated motive for discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where … the surrounding facts tend to reinforce that inference). An employer's defense does not fail simply because not all the evidence supports its defense or because some evidence refutes it. *Electrolux*

Home Products, supra at slip op. at 3. Ultimately, the burden of proof as to the employer's motivating factor lays with the General Counsel.

1. Respondent's Termination of Williams

Before conducting an analysis under *Wright Line*, I must first determine whether Respondent terminated Williams or whether she voluntarily resigned. Respondent argues that Williams resigned from employment because she refused to perform assigned tasks without an increase in pay (R. Br. at 20–21). The fact of a termination does not depend on the use of formal words of firing. *Lance Investigation Service*, 338 NLRB 1109, 1110 (2003); *North American Dismantling Corp.*, 331 NLRB 1557 (2000), enfd. in relevant part and remanded 35 Fed.Appx. 132 (6th Cir. 2002). "It is sufficient if the words or action of the employer 'would logically lead a prudent person to believe his [or her] tenure has been terminated." *North American Dismantling Corp.*, supra (quoting *NLRB v. Trumbull Asphalt Co.*, 327 F.2d 841, 843 (8th Cir. 1964)). Applying this tenet, Williams clearly reasonably believed that she had been terminated. When Williams went back to the facility on October 18 to pick up her paycheck, Dr. Nitu asked her for her facility key because Respondent had found someone else to cover her shifts. Dr. Nitu also told Williams that Respondent would be providing a check to compensate her for her lunch breaks. When Williams asked when she would be put back on the schedule, Dr. Nitu told her that Respondent may call her on October 21 to let her know when she would be working again. Later, Williams sent a text message to Brar asking why she was not on the work schedule. Brar told her that they were looking where to place her on the schedule so she could take her breaks and lunch breaks. At no time thereafter did Brar place Williams back on the schedule. Furthermore, during this entire text message exchange, Brar never confronted Williams with his claim that she was supposed to inform him as to whether she would perform the work duties as assigned for the pay she currently received or what pay rate she wanted. This subject of work duties and pay rate never came up when Williams picked up her paycheck nor when she asked Brar why she was no longer on the schedule. Brar did not respond by telling Williams that she had voluntarily quit. In addition, on the Staff Note, Williams' name was not included on one of the signature lines, which also indicates that Respondent terminated her employment. Based upon the facts, I can only conclude that Respondent's words and actions would lead a "logically prudent person" to believe she was terminated; the facts do not support Respondent's claim that Williams voluntarily resigned.

As set forth above, Williams engaged in protected concerted activity for the purpose of mutual aid or protection, and Respondent was aware of Williams' activity. Next, following the analysis in *Wright Line*, animus must be proven. Animus or discriminatory motive may be proven by direct evidence or inferred by circumstantial evidence. *Tschiggfrie Properties*, Id.; *Robert Orr/Sysco Food Services, LLC*, 343 NLRB 1183, 1184 (2004); *Medic One*, supra (noting that "[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employees all support inferences of animus and discriminatory motivation"); *Electrolux Home Products*, supra; *Temp Masters, Inc.*, 344 NLRB 1188, 1193 (2005); *Promedica Health Systems, Inc.*, 343 NLRB 1351, 1361 (2004).

The record is clear that Respondent demonstrated animus towards Williams' conduct in speaking with Swart regarding Respondent's policy for employees not to clock out for lunch breaks. The timing of events is suspicious and supports an inference of animus and discriminatory motive. During the particularly tough work shift on Wednesday, October 16, Williams complained to Swart, with whom she had never worked, that she was uncomfortable with participating in an animal euthanasia as well as the lack of breaks. Hearing Williams' complaints, Swart advised her to speak to Brar. At the end of her shift, rather than giving her paycheck that day as usual, Brar told Williams to come back on Friday, October 18. When Williams came to the facility that Friday, she was asked to return her facility key as someone else would be taking her work shift. When Williams asked Brar why she was removed from her work shift, the focus of Brar's text messages to Williams was her need for scheduled breaks and lunches, and that everyone else at the facility was satisfied with Respondent's policy and procedures. Removing Williams from the work schedule only 2 days after she complained to Swart, among other complaints, about the lack of breaks is suspicious and indicates animus on the part of Respondent. *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 2 (2020) (temporal proximity between employee's protected concerted activity and the employer's adverse employment action provides some evidence of causal link); *McClendon Electrical Services*, 340 NLRB 613, 613, fn. 6 (2003) (finding discharge that occurred a day after protected concerted activity supported a finding of unlawful motivation); *Mira-Pak, Inc.*, 147 NLRB 1075, 1081 (1964), enfd. 354 F.2d 525 (5th Cir. 1965) (finding termination unlawful where discharge occurred 2 days after protected concerted activity); *Corn Brothers, Inc.*, 262 NLRB 320, 325 (1982) (timing of discharge within a week of union organizing meeting evidence of antiunion animus). Moreover, Brar expressed hostility to Williams' emphasis to him that she could not take her lunch breaks because Respondent did not schedule lunch breaks like other employers do. Williams mentioned to Brar that other employees eat at the reception desk as well and Brar immediately told her not to discuss other employees.

Furthermore, Brar's claim that Williams' voluntarily resigned because she did not receive a pay raise to perform assigned tasks is simply not true. Brar alleged that Williams stopped performing most of her assigned tasks soon after she started employment. Respondent uses Williams' admissions that she declined to assist in several matters on her last day of employment as proof that Williams was not performing her job duties. However, the credited evidence shows that receptionists' job functions vary depending on their desired interests. In addition, during this work shift, Swart told Williams that she does not perform tasks such as euthanasia and surgeries. Moreover, on her last day of employment, Brar never told Williams that she must perform the duties that Cordova and he asked her to perform. Nevertheless, Brar provided false testimony that for several weeks Williams refused to perform many of her assigned duties in the workplace; he never disciplined her or even spoke to her to clarify what duties she had been assigned to perform. Brar provided several shifting explanations for what he expected from Williams after her last workplace shift—Williams was to inform him whether she was willing to perform her assigned duties and what pay rate she wanted, and whether she would perform assigned duties at the same pay rate. Brar provided at least three different variations as to what he expected Williams to do when she returned to the facility on October 18. Brar's text messages to Williams on October 18 and 19 indicate that his focus of not placing Williams on the schedule was her complaint over the lack of lunch breaks. Brar never reminded Williams that she was supposed to respond with her answer as to whether she would perform assigned tasks. Brar did not do so because his explanation that Williams resigned is false. *GATX*

Logistics, Inc., 323 NLRB 328, 335–336 (1997) (inconsistent rationales and failure to address asserted problem underlying discharge indicate pretext), enfd. 160 F.3d 353 (7th Cir. 1998).

Brar's story about Williams' voluntary resignation becomes ever more implausible when coupled with his report to the labor department that Williams always clocked out for her lunches, and he still paid her additional money for her lunches. Brar claimed that he paid Williams for her lunch breaks to "continue working with her," but why would Brar make such a claim when he also claimed that she was tardy, rude to her coworkers, and would not perform her assigned job duties without more money? Looking at the entire circumstances, the evidence clearly shows that Brar learned of Williams' discussion of the lack of lunch breaks in the workplace, removed her from the schedule, told her not to talk about other employees, and paid her lunch breaks to silence her. His claims that she resigned because she did not want to perform all the duties is false, or pretextual, as supported by the contemporaneous documentation. See *Cincinnati Truck Center*, 315 NLRB 554, 556–557 (1994) (evidence of discriminatory motive or animus includes evidence that employer's proffered explanation for adverse action is a pretext, including whether the employer proffers a non-discriminatory explanation that is not true). Under all the circumstances of this matter, Respondent's termination of Williams is pretextual. In sum, the General Counsel has met its initial burden required by *Wright Line*. See *Humes Electric, Inc.*, 263 NLRB 1238, 1239–1240 (1982) (despite employer having legitimate concerns over employee's productivity prior to his protected conduct, discharge violated Section 8(a)(3) based upon pretext of the asserted reason and timing of the discharge).

Despite a finding of pretext, for the sake of argument, I will address Respondent's argument as stated in its amended answer, but not addressed in its post hearing brief, that Williams would have been terminated for refusal to perform her required job duties even absent her protected concerted activity. Terminating an employee for the failure to perform her required job duties would be a legitimate basis for termination. However, Respondent provided no evidence that Williams was not performing her required job duties. Williams admitted that during her last work shift she declined to assist in several difficult matters. But Brar never mentioned these concerns in his text messages to Williams after he removed her from the work schedule. Brar attempts to support his claims that Williams had many deficiencies as an employee including tardiness, rude behavior, and refusal to perform assigned duties in his email to the labor department. However, Brar provided no evidence of such problems, and no witness testified to observing such issues. In fact, every employee who testified described the receptionist position as one in which employees decided what they wanted to perform, and some receptionists assisted more than others with the animals. Accordingly, even if the shifting burden of *Wright Line* applied, Respondent did not meet its burden in showing it would have terminated Williams absent her protected conduct. Thus, Respondent violated Section 8(a)(1) when unlawfully terminating Williams on October 18.

2. Respondent's Threat of Termination and Termination of Padilla

As for Padilla, as set forth above, she engaged in protected concerted activity which was known by Brar, the decision maker. Next, the General Counsel has also proven animus regarding Padilla. Like Williams, the timing of events is suspicious. On October 18, after learning that Brar removed Williams from the work schedule, Padilla complained to both Cordova and Swart about Brar's actions. Thereafter, Garcia presented Padilla with the Staff

Note that Brar wanted the employees to sign; this Staff Note listed requirements for meal breaks during each shift and made employees acknowledge that they have always had time for meal breaks. Padilla refused, and reiterated her position that employees had not been given enough time for meal breaks. Again, Padilla spoke to Cordova about the Staff Note. Later that shift, Brar told Padilla to sign the Staff Note but she refused because she did not agree with the contents. Padilla explained to Brar that she could not sign out for meal breaks due to lack of coverage at the front desk and should have 30 minutes of an uninterrupted break during her shift. Because Padilla would not sign the Staff Note, Brar terminated her on October 21, only 3 days after she complained to her coworkers about Brar's termination of Williams, which arose due to their complaints about the lack of lunch breaks.

Furthermore, before Brar terminated Padilla on October 21 for not signing the Staff Note, he threatened her with termination if she did not sign. If Padilla signed this Staff Note, she would be conceding that Brar had always given her adequate time for her meal breaks. The Board has held that threatening employees with reprisals for engaging in protected concerted activities is coercive to the exercise of their Section 7 rights under the Act. *Baddour, Inc.*, 303 NLRB 275 (1991) (an employers' threats of discipline or job loss for participation in protected concerted activities constitute violations of the Act). This theory applies to explicit or implicit threats to employees, including the loss of their jobs or other adverse work consequences. *Jewish Home for the Elderly of Fairfield County*, 343 NLRB 1069, 1091–1096 (2004) (employer violated Section 8(a)(1) of the Act by threatening loss of benefits, loss of jobs, and closure of the facility if the employees supported the union). Threats of termination for engaging in protected concerted activity violates Section 8(a)(1). *Central Valley Meat Co.*, 346 NLRB 1078 (2006). Brar's threat to terminate Padilla if she did not sign the Staff Note, which would effectively deny her claim of protected activity, is an independent violation of Section 8(a)(1). Moreover, Brar's threat is also proof of animus towards Padilla's advocacy for her working conditions.

The most significant indicator of animus in this matter is that Respondent's alleged non-discriminatory reason for terminating Padilla is simply not true. "*At least where […] the surrounding facts tend to reinforce that inference*" of animus, the Board may infer such animus from the pretextual nature of the employer's proffered justification for its action. *Electrolux Home Products*, supra, slip op. at 4 (citing *Shattuck Denn Mining Corp.*, supra (emphasis added)). Here, the entire circumstances surrounding Respondent's removal of Padilla reinforce this inference. Respondent claims that Padilla was terminated for "unlawful and disloyal acts" when she stole money from the cash drawer in Brar's office on the evening of October 21. However, Respondent's explanation is premised on implausible reactions and inconsistent claims. Respondent alleges that after three employees, one of whom he could not recall, informed him that Padilla was telling employees not to clock out for meals, he decided to have her sign a warning letter. This warning letter notified Padilla of a myriad of infractions including not clocking out for lunch and encouraging other employees to eat without clocking out. According to Brar, Padilla refused to sign the warning letter and went back to work; Brar claims he never threatened to terminate her. Forty to fifty minutes later, Brar claims that he saw Padilla come into his office and take money from the cash drawer. Oddly, Brar testified that he did not question Padilla but only told her to put the money back and she went back to work. Then Brar called her back into his office and told her to leave the facility. Padilla only said "okay." Brar then claimed that he counted the cash drawer and realized money was missing—this amount changed throughout this proceeding, from the amount he told the police, the amount he stated in

his December 11 Board affidavit, and the amount he testified was missing at this hearing. Brar insisted he called the police the same night he saw Padilla take the money, but the police records show that he called the following morning. The timing of when he called the police coincides with the time Padilla left the CPA's office after the CPA refused to provide her payroll records. After Padilla received the phone call from the police department, she sent a text message to Brar. This text message denied stealing money from Brar and that she had never been a thief. Brar never responded to Padilla's text message. However, on November 7, after Padilla again asked Brar via text message for her payroll records, Brar told Padilla never to contact him again as any contact would be seen as a threat to him, chided her for going to his CPA, and told her he had reported her to the police. Later Padilla received a second call from the police, informing her that Brar alleged she threatened him and his family.

Brar's version of events the night Padilla was terminated are simply unbelievable. Brar claims that after Padilla would not sign the warning, he prepared for her, she went back to work without any further discussion. Then after he allegedly caught her stealing money, he only asked her to put the money back and let her go back to work. Such conduct makes no logical sense. Brar claims that he then told her to leave but did not tell her she was terminated; Padilla again did not say anything more than "okay." Brar also did not call the police immediately as he claimed rather than later the next morning. The next day, however, after Padilla received the phone call from the police, Padilla suddenly became irate as evidenced in her text message. Brar never responded to this text message. Brar called the police again when Padilla asked for her payroll records. Brar's story defies belief.

Moreover, Brar created statements for employees to sign that had nothing to do with Padilla's allegedly stealing of money, which he says is the reason for her termination, but affirming that Padilla was seen sitting in the breakroom while clocked and eating when she is clocked in. These statements support Padilla's claim that she was told by Brar *not* to clock out for meal breaks but to eat during downtime. The record is clear that when Padilla pursued her claim of protected activity on October 21, Brar reacted by fabricating that Padilla stole money. In fact, the record supports Padilla's testimony that Brar terminated her employment when she would not sign the Staff Note, waiving her protected activity. Since the General Counsel has made its prima facie case showing sufficient evidence that Padilla's protected conduct was a "motivating factor" in Brar's termination of her, the burden shifts to Respondent to establish by a preponderance of the evidence that the same action would have taken place even in the absence of Padilla's protected concerted activity.

Again, since I have determined that the reasons provided for Respondent's termination of Padilla are false, I do not need to consider Respondent's affirmative defense. But for the sake of completeness, I will consider Respondent's argument that Brar had an honest belief that Padilla stole money from the cash drawer. But Brar's claim of honest belief is belied by his conduct after Padilla sent him a text message denying stealing money from him. Brar never responded to Padilla's text message the following day denying that she stole money. Brar's silence speaks volumes as to this fabricated event. In addition, the statements created by Brar for the employees to sign, if created to support his termination of Padilla, do not mention her stealing money or hearing about Brar's allegation that she stole money. Thus, even if the shifting burden of *Wright Line* applied, Respondent did not meet its obligation to show Padilla would have been terminated

absent her protected conduct. Thus, Respondent violated Section 8(a)(1) by unlawfully terminating Padilla on October 21.

3. Respondent's Falsely Reporting Padilla to the Police on October 22 and November 7

Furthermore, Section 8(a)(1) provides that it is an unfair labor practice to "interfere with, restrain, or coerce employees in the exercise" of the rights guaranteed in Section 7. For purpose of Section 8(a)(1), the motive for the employer's action is irrelevant; if the action, or sequence of actions, reasonably tends to interfere with the free exercise of rights under the Act, it is unlawful. *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999). In *Dickens, Inc.*, 356 NLRB 1298 (2011), the Board affirmed the administrative law judge's decision finding that the employer violated Section 8(a)(1) when falsely accusing the employee of theft to harass the employee due to his prior protected concerted activity. Here, the record is clear that on October 22, Brar called the police and falsely accused Padilla of stealing money *after* she sought to obtain her payroll records to support her claim that Respondent did not permit her to clock out for meal breaks; Padilla continued to pursue her protected activity despite her termination. Again, on November 7, Brar called the police falsely alleging threatening behavior by Padilla *after* Padilla sent Brar a text message asking for her payroll records. Brar's conduct cannot be mistaken as an honest belief but can only be understood as his attempts to interfere with Padilla's protected activity by intimidating her with these illegitimate reports to the police. Padilla's conduct to obtain her payroll records was a continuation of her protected activity in complaining about Brar's policy of not providing meal breaks. See *JMC Transport*, 272 NLRB 545, 546 fn. 2 (1984), enfd. 776 F.2d 612 (6th Cir. 1985) (employee's complaint about a payment discrepancy in his paycheck was a continuation of employee's protected concerted activity in protesting, a month earlier, the employer's change in the way employee wages were calculated). Thus, I find that Respondent violated Section 8(a)(1) when Brar falsely reported Padilla to the police on October 22 and November 7 to interfere with her Section 7 rights.

In sum, the General Counsel met its burden to show that Respondent terminated Williams and Padilla for discriminatory reasons. I therefore find that Respondent violated Section 8(a)(1) of the Act by terminating Williams and Padilla in response to protected concerted activity. In addition, Respondent violated Section 8(a)(1) when Brar threatened Padilla with termination if she did not sign the Staff Note, and falsely reported Brar to the police on October 22 and November 7.

CONCLUSIONS OF LAW

1. Respondent, Castro Valley Animal Hospital, Inc., has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act by:

   a. Threatening Padilla with termination on October 21 if she would not waive her group complaint regarding meal breaks;

   b. Falsely reporting Padilla to the police on October 22 and November 7 by accusing her of theft and threatening behavior because of her protected activities;

c. Terminating Williams on October 18; and

d. Terminating Padilla on October 21.

3. The unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent violated Section 8(a)(1) by terminating employees Christine Arianna Padilla and Akilah Williams, Respondent must offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Padilla and Williams for their reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), Respondent shall compensate Padilla and Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016), Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, file with the Regional Director for Region 32 a report allocating backpay to the appropriate calendar year(s) for each of them. Respondent shall remove from its files any reference to terminations of Padilla and Williams and to notify them in writing that this has been done and that the terminations will not be used against them in any way.

I will order that the employer post a notice at the facility in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id. supra at 13.

The General Counsel requests that I order that the notice be read aloud to employees by Gurbinder Brar or a Board Agent in the presence of Gurbinder Brar (GC Br. at 62–63). The Board has recognized that notice reading is an extraordinary remedy, and I decline to order such a remedy in this matter. Although there are several violations of the Act, including two employee terminations, I do not find this matter to be widespread and egregious to rise to the

level of requiring a notice reading. The General Counsel also requests a broad remedial order requiring Respondent to cease and desist from violating the Act in any other manner (GC Br. at 64). A broad cease-and-desist order is warranted when a respondent has shown to "have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Hickmott Foods*, 242 NLRB 1357, 1357 (1979). Here, the General Counsel has not proven that Respondent is a recidivist, and the violations found here are not so egregious or widespread to warrant such a remedy. Thus, I decline to order a broad cease-and-desist order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[44]

ORDER

Respondent, Castro Valley Animal Hospital, Inc., Castro Valley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening any employee with termination if she refuses to waive group complaints regarding meal breaks.

(b) Falsely reporting any employee to the police by accusing the employee of theft and threatening behavior due to the employee's protected activities including raising complaints about meal breaks.

(c) Terminating any employee because of her protected activities including complaints about meal breaks.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of the Board's Order, offer Christina Arianna Padilla and Akilah Williams full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Christina Arianna Padilla and Akilah Williams whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

[44] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Compensate Christina Arianna Padilla and Akilah Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s) for each of them.

(d) Within 14 days of the date of the Board's Order, remove from its files any reference to the unlawful terminations, and within 3 days thereafter, notify Christina Arianna Padilla and Akilah Williams in writing that this has been done and that the terminations will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Castro Valley, California, copies of the attached notice marked "Appendix."[45] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 2019.

[45] If the facility is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68, slip op. 4 (2020).

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. July 27, 2020

Amita Baman Tracy
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with termination if you refuse to waive group complaints regarding meal breaks.

WE WILL NOT falsely report you to the police by accusing you of theft and threatening behavior due to your protected concerted activities including raising complaints about meal breaks.

WE WILL NOT terminate you because of your protected activities including complaints about meal breaks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Christina Arianna Padilla and Akilah Williams full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Christina Arianna Padilla and Akilah Williams whole for any loss of earnings and other benefits resulting from their termination, less any net interim earnings, plus interest, and **WE WILL** also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Christina Arianna Padilla and Akilah Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each of them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful terminations of Christina Arianna Padilla and Akilah Williams, and **WE WILL**, within 3 days thereafter, notify them in writing that we have done so and that we will not use the terminations against them in any way.

CASTRO VALLEY ANIMAL HOSPITAL, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Oakland Federal Building
1301 Clay Street
Suite 300-N
Oakland, CA 94612-5211
(510) 637-3300, Hours of Operation: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/32-CA-251642 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (510) 671-3034.